(Prevention) Rules, 1987. [Placed in Library, *See* No. LT-4947/87].

SHRI LAL K. ADVANI (Madhya Pradesh): Mr. Chairman; Sir, on a point of order. The hon. Minister of State for Parliamentary Affairs is about to lay on the Table of the House copies of four Ordinances...

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI M. M. JACOB): When item No. 4 comes, you can ask.

Notification of Ministry of Finance and related papers

SHRI M.M. JACOB: Sir, on behalf of SHRI B.K. GADHVI, I beg to lay on the Table:—

I. A copy each (in English and Hindi) of the following Notifications of the Ministry of Finance (Department of Revenue), under section 159 of the Customs Act, 1962, together with Explanatory Memoranda on the Notifications:—

(1) G.S.R. No. 729(E), dated 25th August, 1987, amending Notification No. 154/86—Cus. dated the 1st March, 1986, so as to remove certain ambiguity in the rates indicated therein and delete one of the machines from the scope of concessional rate of duty.

(2) G.S.R. No. 745(E), dated 2nd September, 1987, exempting video cassettes and video tapes recorded with University or Advanced Technical Educational programmes, imported by a University or a research institution, from the whole of the basic and additional duties of customs leviable thereon, subject to certain conditions.

(3) G.S.R. No. 746(E), dated the 2nd September, 1987, exempting video cassettes and video tapes recorded with University or Higher or Advanced Technical Educational Programmes, imported by research students, from the whole of the basic and additional duties of customs, leviable thereon subject to certain conditions.

(4) G.S.R. No. 747(E), dated 2nd September, 1987, exempting goods covered by Notifications GSR No. 745(E), dated 2-9-87 and GSR No. 746(E), dated 2-9-87, from the whole of the auxiliary duties of customs leviable thereon.

(5) G.S.R. No. 748(E), dated 3rd September, 1987, amending Notification No 207/87-Cus. dated 12th May, 1987, so as to prescribe a nil rate of auxiliary duty of customs for video cassettes and video tapes of predominantly educational character, covered by Notification No. 262/86-Customs dated 24th April, 1986.

(6) G.S.R. No. 758(E), dated 9th September, 1987, amending Notification No. 136/86-Customs dated 17-12-1986, so as to increase the effective basic customs duty on Penta from (80% + Rs. 5 per Kg.) to (80% + Rs. 21 per Kg.), with a view to protect the indigenous industry.

(7) G.S.R. No. 760(E), dated 9th September, 1987, amending Notification No. 110-Customs dated the 17th February, 1986, so as to include therein "Message Re-transmission System—Madras of Videsh Sanchar Nigam Limited," as a "Project" under heading 98.01 of the Customs Tariff Act, 1975 for the purpose of classification of all goods imported for the above project.

(8) G.S.R. No. 774(E), dated the 14th September, 1987, amending Notification No. 186/87-Customs, dated 29-4-86, so as to dispense with the

requirement of furnishing a certificate that the goods are of a kind and type not manufactured in India.

(9) G.S.R. No. 783(E), dated 15th September, 1987, amending Notification No. 88/87-Cus. dated 1st March, 1987, so as to prescribe basic customs duty at the rate of 30% *ad valorem* on polystyrens; Rs. 4000 per tonne on paste and pattery grade PVC resins, Rs. 2000 per tonne on suspension grade PVC resins; and Rs. 3000 per tonne on LDPE.

(10) G.S.R. No. 784(E), dated 15th September, 1987, amending Notification No. 227/76-Customs, dated the 2nd August, 1976, so as to prescribe a uniform basic customs duty of 20% *ad valorem* in respect of polypropylene and copolymers of polypropylene and a basic customs duty of 30 per cent in respect of HDPE.

(11) G.S.R. No. 785(E), dated 15th September, 1987, amending Notification Nos. 206/87-Cus. and 208/87-Cus., dated 12th May, 1987, so as to raise the auxiliary duty of customs in respect of PVC resins from nil to 25% and lower the auxiliary duty of customs in respect of polystyrene from 40 per cent to 25 per cent.

(12) G.S.R. No. 799(E), dated the 17th September, 1987, amending Notification No. 188/87-Customs dated 29th April, 1987, so as to include four other types of memory I.Cs. and delete reference to maximum access time.

(13) G.S.R. No. 800(E), dated 17th September, 1987, exempting specified machinery required for technological upgradation of selected capital goods industry from basic customs duty in excess of 35% *ad valorem* and the whole of additional duty of customs, subject to the conditions prescribed in this regard.

(14) G.S.R. No. 801(E). dated 17-9-87, exempting goods covered by Notification G.S.R. No. 800(E), dated 17-9-87, from the whole of the auxiliary duty of customs, leviable thereon.

(15) G.S.R. No. 797(E), dated the 17th September, 1987, amending Notification Nos. 6/84-Cus., dated 10-1-84 and 210/84-Cus., dated 1-8-84, so as to provided that the customs duty concessions would be available to components covered by a list approved by the competent authority in the Directorate General of Technical Development and such list need not be approved by the Ministry of Industry.

(16) G.S.R. No. 860(E), dated the 19th September, 1987, increasing the auxiliary duty of customs, wherever *leviable by five percentage points* except in the case of crude petroleum.

(17) G.S.R. No. 865(E), dated the 28th September, 1987, laying down the rates of exchange for conversion of certain foreign currencies into Indian currency or *vice-versa* for purposes of assessment of imports and exports under Section 14 of the Customs Act, 1962 and calculation of stamp duty under the Indian Stamp Duty Act, 1899.

[Placed in Library. *See* No. LT—4922/87 for (1) to (17)].

II. A copy (in English and Hindi) of the Ministry of Finance (Department of Revenue) Notification G.S.R. No. 769(E), dated the 11th September, 1987, publishing the Central Excise (Fifth Amendment) Rules, 1987, under sub-section (2) of section 38 of the Central Excises and Salt Act, 1944 [Placed in Library. *See* No. LT—4920/87].

III. A copy (in English and Hindi) of the Ministry of Finance (Department of Economic Affairs) Notification G.S.R. No. 836(E), dated the 5th October, 1987, publishing the Research and Development Cess Rules, 1987, under sub-section (3) of section 10 of the Research and Development Cess Act, 1986. [Placed in Library. *See* No. LT—4924/87].

IV. A copy (in English and Hindi) of the Ministry of Finance (Department of Revenue) Notification S.O. No.

894(E), dated the 8th October, 1987, publishing the Income-tax (Seventh Amendment) Rules, 1987, under section 296 of the Income-tax Act, 1961 [Placed in Library. *See* No. LT—4921/87]

V. A copy each (in English and Hindi) of the following Notifications of the Ministry of Finance (Department of Revenue), together with Explanatory Memoranda thereon:—

(1) G.S.R. No. 727 (E), dated 21-8-87, amending Notification No. 64/86-Central Excise dated 10-2-86, so as to completely exempt from payment of excise duty, parts of specified power-driven pumps primarily designed for handling water, falling under Chapter 82, 83 or 84.

(2) G S.R. No. 733 (E), dated 27-8-87, exempting completely from excise duty forgings and forged products falling under sub-heading No. 7308.90 if used in the manufacture of goods which are for the time being exempt from excise duty, and where such use is elsewhere than in the factory of production.

(3) G.S.R. No. 734(E) dated the 27-8-87, amending Notification No. 190/87-Central Excise dated 4-8-87 so as to withdraw the benefit of higher Modvat credit available to user industry from 1-10-87 instead of 1-9-1987.

(4) G.S.R. No. 736(E) dated 28-8-87 exempting from whole of excise duty goods specified in the Table annexed to the notification and manufactured by factories belonging to Central Govt. for use by any Deptt. of the Central Govt.

(5) G.S.R. No. 737(E), dated 28-8-87, exempting from whole of excise duty goods specified in the Table annexed to the notification and manufactured by a village industry and marketed by or with the assistance of the Khadi and Village Industries Commission.

(6) G.S.R. No. 738(E), dated 28-8-87, exempting from whole of excise duty all goods manufactured in prisons.

(7) G.S.R. No. 749(E), dated 3-9-87 amending Notification No. 172/87-Central Excise dated 18-6-87 so as to exempt from excise duty finishing agents, dye-carriers to accelerate the dyeing or fixing of dyestuffs and other proucts and preparations of a kind used in the textile industry.

(8) G.S.R. No. 750(E) dated 3-9-87, exempting from excise duty printing frames when used within the factory of production for printing of textile fabrics.

(9) G.S.R. Nos. 763(E) and 764(E) and 765(E), dated 9-9-87, seeking to withdraw the benefit under the MODVAT scheme and the related benefits in respect of aerated waters (soda and soft drinks) with effect from 1-10-87.

(10) G.S.R. No. 767(E), dated 9-9-87, exempting cigarettes supplied as stores for consumption on board a ship of the Indian Navy from both basic excise duty and additional excise duty in lieu of sales tax, subject to observance of certain procedures

(11) G.S.R. No. 786(E), dated 15-9-87, amending Notification No 132/86-Central Excise dated 1-3-86, so as to prescribe a uniform excise duty of 30 per cent *ad valorem* in respect of polypropylene and copolymers of polypropylene.

[Placed in Library. *See* No. LT—4923/87 for (1 to 11)].

(12) S.O. No. 879(E), dated the 5th October, 1987, appointing the 1st day of December, 1987 as the

date on which the Research and Development Cess Act, 1986 shall come into force.

(13) S.O. No. 880(E), dated the 5th October, 1987, specifying five percent as the rate of Cess payable on all payments made towards the import of technology for the purposes of the Research and Development Cess Act, 1986.

(14) S.O. No. 881(E), dated the 5th October, 1987, forming a fund called the Venture Capital Fund for the purpose of the Research and Developmnt Cess Act, 1986.

[Placed in Library. *See* No. LT-4925/87 for (12) to (14)]

SHRI LAL K. ADVANI: Now, before he lays the papers mentioned in item 4 on the Table, I would like to raise an important issue on which you have to intervene. Sir, law-making is the exclusive prerogative, exclusive province of Parliament, of the Legislature, not of the Executive. The Executive has been armed, under Article 123 of the Constitution, to promulgate ordinances in very special, extraordinary circumstances, not as a matter of routine, not in a casual manner, and not to cover up lapses of their own in what they should have done earlier but have not done. In this particular case, my very particular objection is to the amendment being made to the Finance Act, 1987 The Finance (Amendment) Ordinance, 1987 (No. 6 of 1987) seeks to amend the Finance Act of this year. I do not remember if ever before this kind of a thing has happened in the last forty years. For the first time, the Finance Act is being amended by ordinance.

Mr. Chairman, on this particular issue, there was prolonged correspondence between the first Speaker of the Lok Sabha, Shri Mavlankar, and the then Prime Minister Pandit Nehru. Mavlankarji, in his letter to the Prime Minister, dated July 19, 1954, wrote that.

"Issue of an ordinance is undemocratic and cannot be justified except in case of extraordinary urgency or emergency. If this ordinance issuing is not limited by convention only to extraordinary and very urgent cases, the result may be that in future, the Government may go on issuing ordinances giving the Lok Sabha no option but to rubber-stamp the ordinances." Thus, the Speaker Shri Mavlankar regarded ordinance issuing as a way of converting the Parliament into a rubber stamp for the Executive. A serious charge is made. Further more, because of an ordinance, the Income-tax Act had been amended. The Speaker Shri Mavlankar said he took particular objection to it because it indirectly affected the finance. He observed: "It would be a wrong precedent to have an ordinance for such a purpose. Wherever there is a financial implication, you should not issue an ordinance."

Now, Sir, every one of us knows that the Budget Session of Parliament is the most important Session of Parliament. The high point of this important Session is the Finance Bill being converted into the Finance Act after prolonged deliberations, three months' long deliberations, of both the Houses in which demands for grants etc. are studied and discussed. Now, here, six months after the Finance Act is passed the Government comes to us with an ordinance which has amended it and wants us to rubber-stamp it. This calls for a severe admonition from the Chairman that the Government should not act in this way and Parliament cannot be taken for granted. Therefore, I raise this point of order. Before you allow him to lay it you should give your own ruling as to what should be done in this respect. In the past also I have raised matters relating to notifications having financial implications and the Chairman had given elaborate rulings on those particular issues. This is a matter whtich is far more

serious than notifications with financial implications. This is an ordinance with financial implications. Thank you, sir.

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): I support the point of order raised by my hon. friend Shri Advani. The Finance Minister is also there. Let him explain the posiiton. I also support that you must admonish the Government for resorting to these tactics repeatedly.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): Mr. Chairman, Sir, whenever an ordinance is placed on the Table of the House a series of objections is usual. I am not in favour of the ordinance. But I am a little pained that the hon. Members who have raised objections to the laying of the amendment, to the enactment of this ordinance, have really not understood the substance of the amendments made.

SHRI LAL K. ADVANI: I will come to the substance when we discuss. I may suport the Act itself.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am coming to it. It is obvious that the honourable Member is not paying income-tax exceeding Rs. 60,000; otherwise, he would have known it. The Ordinance had to be issued because advance payments are made on or before 15th September, 15th December and 15th March. In order that the first instalment should be made within a period of one month, this Ordinance had to be issued. We all had to pay the advance tax within the stipulated period. I am only justifying the necessity of the Ordinance. That was the necessity.

SHRI PARVATHANENI UPENDRA: Why was it not anticipated earlier?

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Drought could not have been anticipated...

SHRI PARVATHANENI UPENDRA: Every year ther is flooa or drought in one part or the other...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: The more you argue, the more futile you prove in your arguments. It is to meet a drought situation of the Century. And I cannot put it higher than that. It was necessary because the advance payments had to be made before 15th September. Therefore, I submit that this sort of objection is without substance.

SHRI CHITTA BASU (West Bengal): Mr. Chairman, it is not relevant whether the amenaments which are sought to be made are justifiea or are not justified. What is relevant now is whether the Government can be allowed to promulgate an ordinance as and when they wish. There are clear directions, guidelines, in this regard, that the Government should be restrained from this kind of power of promulgating ordinances when there is no extra ordinary circumstance. This relates particularly to financial affairs. They should have resorted to other methods. It is highly inappropriate and condemnable, I would say, to resort to this kind of ordinance-making power.

SHRI NIRMAL CHATTERJEE (West Bengal): May I bring to your notice the fact that one of the elements in the Ordinance is imposition of a surcharge on air travel and rail travel. What I am trying to draw your attention to is....

SHRI LAL K. ADVANI: That is not part of it.

SHRI NIRMAL CHATTERJEE: .... that 1st November imposition is not there. This only indicates the sense of urgency of the Government. Therefore, it does appeal to as that promulgation of the Ordinance had a sounding of defying the Houses of Parliament and that is what is to be condemned in the House.

THE MINISTER OF FINANCE AND THE MINISTER OF COMMERCE (SHRI NARAYAN DATT TIWARI): Mr. Chairman, I have heard with utmost respthe objections raised by my distinguished colleague, Advaniji, and other distinguished Members. I agree that it should not ordinarily be a routine sort of a thing that we amend Acts by ordinances, especially the Finance Act. I am for that. There is no question, the Finance Act should not ordinarily be amended by ordinance or should not ordinarily be amended once it has been legislated upon. But this year there has been an extraordinary situation and the honourable Member himself would perhaps agree that because of the unprecedented drought we had to raise additional resources and I had the blessings of this House in this matter, that we must do whatever we could to provide succour to the suffering masses and the quotation that has been given by the honourable Member that unless there is an emergency or unprecedented....

SHRI LAL K. ADVANI: Not in respect of finances.

SHRI NARAYAN DATT TIWARI: There had been an emergency in the sense that there was an unprecedented drought. Everyday we were looking for rains and there were no rains. In all humility I submit that I would be the last person to have to resort to such an ordinance, but I had to do my duty to this House to raise resources for meeting the unprecedented drought and floods in a few States. Therefore, I am thankful to my honourable friend, Mr. Bhandare, for having brought out that unless we amended the Income-tax Tax Act for that we could not have got the advance income-tax for this year. And, therefore, it became the essence of the matter and that was the reason why we had to bring forward this Ordinance. I am grateful to Advaniji, as far as the content of the Ordinance goes, for supporting the resource-raising efforts.

श्री लाल कृष्ण आडवानी : आप इमरजेंट मीटिंग बुलाते पार्लियामेंट की, उसमें आपत्ति नहीं है। लेकिन फायनेंस बिल के लिये यह नहीं होगा।

SHRI NARAYAN DATT TIWARI: I hope, Sir, that the honourable Members will bear with me.

श्री लाल कृष्ण आडवाणी: आप एक्जामिन कीजिये।

It is a very vital matter.

MR. CHAIRMAN: There is a Constitutional provision under article 123 for issuing Ordinances. Strong views have been expressed about this. I hope these views and the propriety of the Constitution will be kept in view by the Government and, in future, recourse to issuing Ordinances will be minimal and will be as sparing as possible, especially in the case of financial Ordinances ...(*Interruptions*) .... and they will be issued only when absolutely essential and urgent.

Now, Papers to be laid on the Table.

Ordinances under Article 123 of the Constitution

SHRI M. M. JACOB: Sir, I beg to lay on the Table, under sub-clause (a) of clause (2) of Article 123 of the Constitution, a copy each (in English and Hindi) of the following Ordinances:—

(i) The Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1987. (No. 5 of 1987). [Placed in Library. *See* No. LT—4916/87].

(ii) The Finance (Amendment), Ordinance, 1987 (No. 6 of 1987) [Placed in Library. *See* No. LT—4917/87].

(iii) The Representation of the People (Amendment) Ordinance, 1987 (No 7 of 1987). [Placed in Library. *See* No LT—4918/87].

(iv) The Auroville (Emergency Provisions) Amendment Ordinance, 1987 (No. 8 of 1987). [Placed in Library *See* No. LT—4919/87].

I. Report and Audited Account, (1985-86) of the Peoples 'Action for Development (India), New Delhi and related papers.

II. Report and Audited Accoun's of the Council for Advancement of Rural Technology, New Delhi and related papers for the period April 1985 to August, 1986.